IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.169 of 2005
Date of decision:23.10.2006

Commissioner of Central Excise, Jalandhar (HQRS. At Chandigarh)

....Appellant

versus

M/s. R.C Paper Mills Limited, Fatehgarh Churian Road, Amritsar, District Amritsar (Punjab).

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Gurpreet Singh, Central Govt. Counsel, for the appellant.

JUDGMENT:

This appeal has been preferred by the Revenue against order dated 15.2.2005 passed by the Custom, Excise & Service Tax Appellate Authority (CESTAT), New Delhi in Appeal Nos.E/2150 and 2163/04-NB (S), proposing following substantial questions of law:-

> "i) Whether any assessee is immune for its acts of omission or commission namely by debiting the Central Excise duty prior to issuance of show cause notice and is not liable to penalty under the provisions of Rule 173Q of the Central Excise Rules, 1944?
>
> ii) Whether mens rea is essential for invoking penal provisions as per provisions of Rule 173Q of the Central Excise Rules, 1944?"

The assessee availed of exemption under Notification No.6/2000 dated 1.3.2000. The exemption was later held to be not admissible and apart from imposing duty, penalty was also levied. The same was upheld in appeal. However, on further appeal before the Tribunal, the levy of penalty was set aside, on the ground that the assessee reversed the Modvat credit before issue of show cause notice and in such a situation, penalty could not be justified in view of decision of the Tribunal in **CCE,**

Delhi III v. Machino Montell (I) limited, 2004 (168) ELT 466.

Learned counsel for the revenue submits that view taken by the Tribunal in **Machino Montell(I) Limited** has been set aside by this Court in CEA No.13 of 2005, **Commissioner of Central Excise Delhi-III v. M/s. Machino Montell (I) Limited and another**, decided on 25.7.2006.

Though, contention raised by the learned counsel for the revenue is correct but we find that even the Commissioner (Appeals) has recorded a finding that :

> "....I find that the penalty imposed by the adjudicating authority equivalent to the amount of credit recoverable from the appellant is on higher side especially in the view that department themselves was not properly clear about the issue and the facts on record do not warrant such action. I find that after adjustment of accounts of opening balance as on 1.3.2000 and 1.4.2000, the appellant was liable to pay the amount of Rs.2,33,710/- and Rs.37,654/- respectively for which the violation is to be viewed for invoking penal provisions. I find that the amount of penalty is reducible under the circumstances of the case and a lenient view is liable to be taken."

In view of the above finding, even though, penalty was not liable to be set aside on the ground that the assessee had reversed the credit before issuance of show cause notice, in absence of finding that the assessee had the requisite mens rea, we are unable to hold that any substantial question of law arises.

Accordingly, the appeal is dismissed.

(Adarsh Kumar Goel)
Judge

October 23, 2006
'gs'

(Rajesh Bindal)
Judge